

### **REMARKS/ARGUMENTS**

Claims 2-20 and 22-31 are pending in this application, and stand rejected. In this paper, claims 6, 14, and 15 have been canceled without prejudice. Independent claims 30 and 31 have been amended. Dependent claims 2, 3, 5, 7, 11, and 16-18 have been amended to conform with the revisions and additions to the independent claims.

The amendments made herein add no new matter. Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

#### **Claim Rejections - 35 U.S.C. §103(a)**

Claims 2, 4, 15, 19, 22, 28, 30, and 31 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 2,767,944 to Moore, in view of U.S. Patent No. 3,426,986 to Pool, and further in view of U.S. Patent No. 6,055,998 to Bader. The rejection is traversed.

Initially, the combination of Moore ‘944, Pool ‘986, and Bader ‘998 does not meet the *prima facie* requirements of an obviousness rejection. To establish a *prima facie* case of obviousness, several basic criteria must be met. Under *Graham v. John Deere*, 383 U.S. 1; 86 S. Ct. 684; 15 L. Ed. 2d 545 (1966), it is necessary to 1) determine the scope and content of the prior art; 2) ascertain the differences between the prior art and the claims at issue; 3) resolve the level of ordinary skill in the pertinent art; and 4) evaluate evidence of secondary consideration. Additionally, the obviousness evaluation will be informed by a showing of teaching, suggestion, or motivation that would lead a person of ordinary skill in the art to combine the prior art to meet the claimed subject matter, although a rigid application of this showing is not required. The obviousness

analysis must be explicit, and it is necessary to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. \_\_; 127 S. Ct 1727; 82 U.S.P.Q.2d (BNA) 1385 (2007). Secondary considerations, such as commercial success, long felt but unsolved needs, failure of others, etc., may be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. *Graham, supra*, 383 U.S. at 17-18.

The Examiner recognizes the necessity of satisfying the *Graham* factual inquiries, but fails to engage in the required analysis. Specifically, the Examiner fails to resolve the level of ordinary skill in the pertinent art. Indeed, the Examiner fails to address the level of ordinary skill at all. Thus, the first *Graham* factual inquiry has not been satisfied.

The Examiner also fails to properly determine the scope and content of the prior art because the Examiner does not correctly describe the structure and operation of the device disclosed in Pool '986. Prior to explaining the Examiner's mischaracterization of Pool '986, a brief summary of Pool '986 will be useful to understand its correct structure and operation. Pool '986 discloses a leg assembly that comprises, in pertinent part, a leg L, a mounting M, and a biasing element E, such as a helical spring. The mounting M is attached to the supported device D, and defines an open inner chamber. The leg L is hollow ("The leg is an elongated part formed concentrically about a vertically disposed axis, being of depending tubular cross-section.... In other words, and generally speaking, the leg part L is an inverted hat-shaped part having a downwardly active rim 11 and an upwardly faced seat 12 at its interior lower extremity." *Pool '986, col. 2, ln. 48-69.*) and adapted so that a portion 11 of the leg L is telescopically received in the inner chamber of the mounting M. As illustrated in Figure 2, the leg L terminates in a foot 13 underlying a seat 12 in the interior of the leg L and defining a face 14 for engagement with a supporting surface. The leg L extends out of the mounting M. The biasing element E is

received within the hollow center of the leg L and the inner chamber of the mounting M to engage the seat 12 and thereby urge the leg L outwardly of the mounting M.

The spring constant of the biasing element E is selected so that the weight of the device D urges the leg L inwardly relative to the mounting M against the force of the biasing element E, thereby "suspending" the device D on the biasing element E. Neither the leg L nor the mounting M is deformable, although the leg L may reciprocate into and out of the interior of the mounting M as resisted by the spring E.

The Examiner asserts that the foot 13 comprises a solid-bodied boot that is deformable, citing Figures 1-3 in support. However, even a cursory review of Figures 1-3 will illustrate to one of ordinary skill in the art that the foot 13 is not deformable as asserted. The foot 13 is merely a lower portion of the leg L, and is not deformable. The leg L and its foot are designed to reciprocate within the mounting M against the spring E. It is the spring E that absorbs the forces, not any deformation of the leg L. Thus, the leg L not only does not deform, it does not need to deform to perform the shock-absorbing function, as the spring E performs that function.

There is just absolutely no disclosure in Pool that supports the Examiner's conclusion that the leg L deforms. Indeed, the entire leg L is not deformable. An object is deformable if it can change in shape or dimensions in response to stress. Pool '986 discloses neither the foot 13 nor the leg L as changing in shape or dimensions in response to stress.

The Examiner also asserts that the foot 13 is deformable because "area M is capable of moving closer to area L when in a compressed state indicating that it is able to deform...." *Office action, p. 3*. This is patently inaccurate. The mounting M is not an area; it is a hollow body. It is fixedly mounted to the device D, and thus does not move. The leg L is also not an area. The relative movement of the mounting M and the leg L is no indication of deformation. In fact, the relative motion of mounting M and leg L is

reciprocation of the leg L within the interior of mounting M as damped by the spring E. Both the mounting M and the leg L retain their shape during such reciprocal movement. There is no deformation. Thus, the scope and content of Pool '986 has not been properly determined, and the second *Graham* factual inquiry has not been satisfied.

Because the Examiner does not correctly describe the structure and operation of the device disclosed in Pool '986, the Examiner cannot correctly ascertain the differences between the prior art and the claims at issue. Thus, the third *Graham* factual inquiry has not been satisfied. For these reasons alone, the rejections under 35 U.S.C. §103(a) cannot be supported.

The combination of Moore '944, Pool '986, and Bader '998 is further improper because Bader '998 is non-analogous art.

Bader '998 discloses a crutch with a boot and a spring assembly which can be added to the crutch for absorbing shock imposed during use of the crutch. The rejection cannot be sustained because Bader '998 is non-analogous art.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 864, 26 USPQ2d 1767 (Fed. Cir. 1993). While Patent Office classification is some evidence of analogy, the similarities and differences in structure and function of the inventions disclosed in the references carry far greater weight. *In re Clay*, 966 F.2d 656, 23 U.S.P.Q.2D (BNA) 1058 (Fed. Cir. 1992).

The first requirement has not been met. Bader '998 is in a field that is entirely different from the field of Applicants' invention. Bader '998 is directed to a crutch. This is entirely different from the field of Applicants' invention. Applicants' invention is directed toward an assembly comprising a rigid foot and a resilient boot for supporting an appliance. The two fields are completely unrelated.

The second requirement has also not been met. Bader '998 is not reasonably pertinent to the problem with which Applicants were concerned. The problem to be solved by Bader '998 is realizing the benefits of shock absorption in a crutch, cane, walker, etc. that is manufactured without a shock absorbing feature. *See, e.g., Healey '405, para. [0007].* The problem to be solved by Applicants' invention is controlling the transfer of vibratory forces from a stationary appliance to a supporting floor. *See, e.g., Application, para. [0005], [0006].* Bader '998 and Applicants' invention are directed to entirely unrelated problems. Bader '998, because it is concerned with readily enhancing the comfort of a user of a crutch, would not have commended itself to an inventor's attention in considering the problem of controlling the transfer of vibratory forces from a stationary appliance to a supporting floor. In effect, Bader '998 is not concerned with controlling the transfer of forces from the crutch to a support surface, it is concerned with controlling the transfer of forces from the crutch to a user. This is wholly unrelated to the focus of Applicants' invention, i.e. the minimization of forces transferred to a support surface.

The third requirement is also not met. The structure and function of the Bader '998 invention and Applicants' invention are significantly different. The Bader '998 invention comprises a crutch having a lower leg which incorporates a spring providing a shock absorbing function that reduces discomfort to a user. Applicants' invention comprises a metal foot and an overlying flexible boot which can deform in a controlled manner in order to control the transfer of forces. The structure and function of

Applicants' invention is entirely different from the structure and function of the Bader '998 crutch shock absorber. Thus, Bader '998 is non-analogous art.

For the above reasons, the combination of Moore '944, Pool '986, and Bader '998 is improper as made, and the rejection based on the improper combination is not sustainable.

Nevertheless, even if the combination were proper, which it is not, the combination would not reach the invention called for in claims 2, 4, 15, 19, 22, 28, 30, and 31.

Initially, claim 15 has been canceled without prejudice. Thus, the rejection is moot as to claim 15. Applicants request withdrawal of the rejection of claim 15.

Moore '944 discloses a washing machine supported on a plurality of floor-engaging feet. Two of the feet comprise auxiliary self-adjusting feet 22, 23. These feet 22, 23 comprise a threaded shank 24 terminating in a disk-like foot 25. The foot 25 is enclosed in a cylindrical shell 26 having an aperture 28 in a top wall 27 through which the shank 24 movably extends. The interior of the shell 26 surrounding the foot 25 is occupied by "a permanently plastic and putty-like resilient composition of high viscosity." *Moore '944, col. 1, ln. 50-55.*

As discussed above, Pool '986 discloses a leg assembly which can reciprocate relative to the mounting, but is not deformable, and Bader '998 discloses a crutch with a boot and a spring assembly for absorbing shock imposed on a user during use of the crutch.

The Examiner has not explained how the devices in Moore '944, Pool '986, and Bader '998 would be combined. The combination of Moore '944, Pool '986, and Bader '998, if it could practicably be made, would result in a cabinet supported on a disk-like foot that is spring-biased away from the cabinet and enclosed in a plastic, putty-like

resilient composition within a shell, having a boot shaped like a crutch foot. The combination would not result in a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through the foot and into the floor, as called for in amended claims 30 and 31.

The function of the boot called for in amended claims 30 and 31 is “to permit some motion of the cabinet 12 and foot assemblies 14 relative to the floor 18 to isolate the forces generated by the rotating wash basket 20 from acting on the floor 18 for a limited range of motion of the cabinet 12 to prevent the moving cabinet from adversely impacting the surrounding environment. Consequently, the boot 16 has geometry or composition or some combination thereof that enables it to deflect.” *Application, para. [0035]*. The boot has a specialized geometry consisting of a snubber 48 in a recess 46. “When the boot 16 collapses from a large force, the snubber 48 contacts the floor 18 to limit the motion of the cabinet and foot. However, prior to the snubber compressing against the floor, the boot cabinet is free to move with the boot to dissipate the forces acting on the cabinet.” *Application, para. [0038]*. None of the references discloses this function or structure, and the combination of the references fails to disclose this function or structure. Claims 30 and 31 are patentable over the combination of Moore ‘944, Pool ‘986, and Bader ‘998.

Moreover, claims 30 and 31 require that the boot be deformable to effect the movement of the snubber from a position away from the floor to a position in contact with the floor. In all of the references forming the combination, there is no such structure. The foot in all of the references is always in contact with the floor and no other portion of the foot contacts the floor. Thus, the combination does not teach any structure

that is physically or functionally similar to the deformable body that controls when the snubber is away from or contacts the floor.

As the combination does not disclosure the claimed structure and does not perform a function attributable to the claimed structure, the combination does not render claims 30 and 31 obvious.

Claims 2, 4, and 19 depend from claim 30 and, for the same reasons, are patentable over Moore '944, Pool '986, and Bader '998. Claims 22 and 28 depend from claim 31 and, for the same reasons, are patentable over Moore '944, Pool '986, and Bader '998. Applicants request withdrawal of the rejection, and the allowance of claims 2, 4, 19, 22, 28, 30, and 31.

Claim 20 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, and Bader '998 as applied to claim 19, and further in view of U.S. Patent No. 5,029,458 to Obata et al. The rejection is traversed.

Obata '458 discloses a horizontal axis washing and drying machine supported on rubber feet 1a.

Claim 20 depends from claim 30. As discussed above, the underlying combination of Moore '944, Pool '986, and Bader '998 does not, and cannot, reach the invention of claim 30. As Obata '458 does not address the shortcomings of the underlying combination with respect to claim 30, and claim 20 depends from claim 30, claim 20 is patentable over the combination with Obata '458 for the same reasons as claim 30 is patentable over the underlying combination.

More specifically, the rubber feet 1a of Obata '458 are not described. Thus, Obata '458 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot

substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through the foot and into the floor as required by claim 30, and thus claim 20. Obata '458 in no way discloses that the boot is deformable at all. Thus, the combination of Moore '944, Pool '986, and Bader '998, with Obata '458, does not, and cannot, reach the invention of claim 20.

Applicants request withdrawal of the rejection, and the allowance of claim 20.

Claims 3 and 29 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, and Bader '998, and further in view of U.S. Patent No. 6,141,995 to Johnson. The rejection is traversed.

Johnson '995 discloses a washing machine 10 comprising a pump 18 supported by a flexible pump mount 32 comprising a pair of arms 38, which is in turn supported by a pair of mounting feet 34 which each include a flange 35 and a slot 36 formed between the feet 34 and the flange 35.

Claim 3 depends from claim 30. Claim 29 depends from claim 31. As discussed above, the combination of Moore '944, Pool '986, and Bader '998 does not, and cannot, reach the invention of claims 30 and 31. As Johnson '995 does not address the shortcomings of the underlying combination with respect to claims 30 and 31, and claims 3 and 29 depend from claim 30 and 31, claims 3 and 29 are patentable over the combination with Johnson '995 for the same reasons as claims 30 and 31 are patentable over the underlying combination.

More specifically, Johnson '995 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the

snubber is in contact with the floor and the boot substantially passes the forces through the foot and into the floor as required by claims 30 and 31, and thus claims 3 and 29. Johnson '995 does not disclose that the feet 34 are deformable at all. Johnson '995 does not remedy the deficiencies in the combination of Moore '944, Pool '986, and Bader '998.

Thus, the combination of Moore '944, Pool '986, and Bader '998, with Johnson '995, does not, and cannot, reach the invention of claims 3 and 29.

Applicants request withdrawal of the rejection, and the allowance of claims 3 and 29.

Claims 5-7, 14, and 23 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, and Bader '998, and further in view of U.S. Patent Application Publication No. 2005/0081405 of Healy. The rejection is traversed.

Claim 14 has been canceled without prejudice. Thus, the rejection is moot as to claim 14. Applicants request withdrawal of the rejection of claim 14.

Healy '405 discloses a shoe having an outsole with deforming or articulating outsole lugs. The lugs deform or articulate when the shoe contacts the ground, thereby changing the surface area of the outsole, and thus the contact pressure between the outsole and the ground surface.

Healy '405 is also non-analogous art. Healey '405 is directed to an outsole for footwear. This is entirely different from the field of Applicants' invention. Applicants' invention is directed toward an assembly comprising a rigid foot and a resilient boot for supporting an appliance. The two fields are completely unrelated.

Healey '405 is not reasonably pertinent to the problem with which Applicants were concerned. The problem to be solved by Healey '405 is improving the traction of footwear being utilized to traverse different surfaces. *See, e.g., Healey '405, para.*

[0007]. The problem to be solved by Applicants' invention is controlling the transfer of vibratory forces from a stationary appliance to a supporting floor. *See, e.g., Application, para. [0005], [0006]*. In effect, Healey '405 is directed to enhancing the transfer of forces from the footwear to a supporting surface, directly the opposite of the focus of Applicants' invention, which is to minimize such forces.

The structure and function of the Healey '405 invention and Applicants' invention are significantly different. The Healey '405 invention comprises a series of articulating projections on the outsole of footwear, which can flex in response to the weight of a hiker applied to the outsole and the topography of the terrain with which the outsole is in contact in order to enhance the contact of the outsole with the surface. Applicants' invention comprises a metal foot and an overlying flexible boot which can deform in a controlled manner in order to minimize the transfer of forces between the metal foot and a supporting surface. Thus, Healey '405 is non-analogous art, the combination is improper as made, and the rejection based on the improper combination is not sustainable.

Claims 5-7 depend from claim 30. Claim 23 depends from claim 31. As Healey '405 does not address the shortcomings of the underlying combination with respect to the independent claims, and claims 5-7 and 23 depend directly or indirectly from one of the dependent claims, claims 5-7 and 23 are patentable over the combination with Healy '405 for the same reasons as the independent claims are patentable over the underlying combination.

More specifically, Healey '405 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through

the foot and into the floor as required by claims 30 and 31, and thus claims 5-7 and 31. Healy '405 does not remedy the deficiencies in the combination of Moore '944, Pool '986, and Bader '998. Thus, the combination of Moore '944, Pool '986, and Bader '998, with Healey '405, does not, and cannot, reach the invention of claims 5-7 and 23.

Applicants request withdrawal of the rejection, and the allowance of claims 5-7 and 23.

Claims 8-10 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, Bader '998, and Healy '405, and further in view of U.S. Patent No. 3,601,345 to Johnson. The rejection is traversed.

Johnson '345 discloses a cup-shaped foot comprising an integrated spring element in order to provide vibration isolation to be supported structure. The cup shape of the foot provides a gripping action of the foot upon the supporting surface, which increases with the load applied to the foot.

Claims 8-10 depend from claim 30. As Johnson '345 does not address the shortcomings of both the underlying combination and the underlying combination with Healy '405 with respect to the independent claims, and claims 8-10 depend directly or indirectly from one of the independent claims, claims 8-10 are patentable over the combination with Johnson '345 for the same reasons as the independent claims are patentable over the underlying combination.

More specifically, Johnson '345 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through the foot and into the floor as required by claim 30, and thus claims 8-10. Johnson '345

does not remedy the deficiencies in the combination of Moore '944, Pool '986, and Bader '998 with Healy '405.

Thus, the combination of Moore '944, Pool '986, and Bader '998, with Healy '405, and Johnson '345, does not, and cannot, reach the invention of claims 8-10.

Applicants request withdrawal of the rejection, and the allowance of claims 8-10.

Claim 11 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, Healy '405, Bader '998, and Johnson '345 as applied to claim 10, and further in view of U.S. Patent No. 5,713,382 to Midcap. The rejection is traversed.

Midcap '382 discloses a walking aid tip having an enlarged base, and a combination of convex and flat portions, which is made of a non-flexible rubber material, in order to improve the support of a walking aid, such as a cane, on smooth or slippery surfaces.

Claims 11 depend from claim 30. As Midcap '382 does not address the shortcomings of the underlying combinations with respect to the independent claims, and claim 11 depends directly or indirectly from one of the independent claims, claim 11 is patentable over the combination with Midcap '382 for the same reasons as the independent claims are patentable over the underlying combinations.

More specifically, Midcap '382 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through the foot and into the floor as required by claim 30, and thus claim 11. Midcap '382 does

not remedy the deficiencies in the combination of Moore '944, Pool '986, and Bader '998 with Healy '405 and Johnson '345.

Thus, the combination of Moore '944, Pool '986, and Bader '998, with Healy '405, Johnson '345, and Midcap '382, does not, and cannot, reach the invention of claim 11.

Applicants request withdrawal of the rejection, and the allowance of claim 11.

Claim 12 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, Bader '998, Healy '405, Johnson '345, and Midcap '382 as applied to claim 11, and further in view of U.S. Patent No. 4,947,882 to Levasseur. The rejection is traversed.

Levasseur '882 discloses a tip for a crutch or walking stick comprising a ball and socket joint incorporating a resilient material which connects a foot to the crutch/walking stick and which maintains the crutch/walking stick in a preselected position relative to the foot.

Claims 12 depends from claim 30. As Levasseur '882 does not address the shortcomings of the underlying combinations with respect to the independent claims, and claim 12 depends directly or indirectly from one of the independent claims, claim 12 is patentable over the combination with Levasseur '882 for the same reasons as the independent claims are patentable over the underlying combinations.

More specifically, Levasseur '882 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through

the foot and into the floor as required by claim 30, and thus claim 12. Levasseur '882 does not remedy the deficiencies in the combination of Moore '944, Pool '986, and Bader '998 with Healy '405, Johnson '345, and Midcap '382.

Thus, the combination of Moore '944, Pool '986, and Bader '998, with Healy '405, Johnson '345, Midcap '382, and Levasseur '882, does not, and cannot, reach the invention of claim 12.

Applicants request withdrawal of the rejection, and the allowance of claim 12.

Claim 13 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, Bader '998, Healy '405, Johnson '345, Midcap '382, and Levasseur '882 as applied to claim 12, and further in view of U.S. Patent No. 6,131,593 to Greene et al. The rejection is traversed.

Greene '593 discloses a triangular-shaped tip for a walking stick which provides a broader base of support for the user.

Claims 13 depends from claim 30. As Greene '593 does not address the shortcomings of the underlying combinations with respect to the independent claims, and claim 13 depends directly or indirectly from one of the independent claims, claim 13 is patentable over the combination with Greene '593 for the same reasons as the independent claims are patentable over the underlying combinations.

More specifically, Greene '593 does not disclose a deformable boot having a snubber that moves relative to the foot as the boot is deformed between a first physical shape corresponding to an isolating condition, where the snubber is out of contact with the floor and the boot substantially isolates the floor from forces acting through the foot, and a second physical shape corresponding to the non-isolating condition, where the snubber is in contact with the floor and the boot substantially passes the forces through the foot and into the floor as required by claim 30, and thus claim 13. Greene '593 does

not remedy the deficiencies in the combination of Moore '944, Pool '986, and Bader '998 with Healy '405, Johnson '345, Midcap, and '382 Levasseur '882.

Thus, the combination of Moore '944, Pool '986, and Bader '998, with Healy '405, Johnson '345, Midcap '382, Levasseur '882, and Greene '593, does not, and cannot, reach the invention of claim 13.

Applicants request withdrawal of the rejection, and the allowance of claim 13.

Claims 16 and 24 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, and Bader '998, and further in view of Johnson '345. The rejection is traversed.

Claim 16 depends from claim 30. Claim 24 depends from claim 31. As Johnson '345 does not address the shortcomings of the underlying combination with respect to the independent claims, and claims 16 and 24 depend directly or indirectly from one of the independent claims, claims 16 and 24 are patentable over the combination with Johnson '345 for the same reasons as the independent claims are patentable over the underlying combination. The combination of Moore '944, Pool '986, and Bader '998, with Johnson '345, does not, and cannot, reach the invention of claims 16 and 24 for the same reasons as previously discussed.

Applicants request withdrawal of the rejection, and the allowance of claims 16 and 24.

Claims 17 and 25 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore '944, Pool '986, and Bader '998, and further in view of Midcap '382. The rejection is traversed.

Claim 17 depends from claim 30. Claim 25 depends from claim 31. As Midcap '382 does not address the shortcomings of the underlying combinations with respect to the independent claims, and claims 17 and 25 depend directly or indirectly from one of

the dependent claims, claims 17 and 25 are patentable over the combination with Midcap ‘382 for the same reasons as the independent claims are patentable over the underlying combinations. The combination of Moore ‘944, Pool ‘986, and Bader ‘998, with Midcap ‘382, does not, and cannot, reach the invention of claims 17 and 25 for the same reasons as previously discussed.

Applicants request withdrawal of the rejection, and the allowance of claims 17 and 25.

Claims 18 and 27 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore ‘944, Pool ‘986, and Bader ‘998, and further in view of Greene ‘593. The rejection is traversed.

Claim 18 depends from claim 30. Claim 27 depends from claim 31. As Greene ‘593 does not address the shortcomings of the underlying combinations with respect to the independent claims, and claims 18 and 27 depend directly or indirectly from one of the independent claims, claims 18 and 27 are patentable over the combination with Greene ‘593 for the same reasons as the independent claims are patentable over the underlying combinations. The combination of Moore ‘944, Pool ‘986, and Bader ‘998, with Greene ‘593, does not, and cannot, reach the invention of claims 18 and 27 for the same reasons as previously discussed.

Applicants request withdrawal of the rejection, and the allowance of claims 18 and 27.

Claim 26 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Moore ‘944, Pool ‘986, Bader ‘998, and Midcap ‘382 as applied to claim 25 , and further in view of Levasseur ‘882. The rejection is traversed.

Claim 26 depends from claim 31. As Levasseur ‘882 does not address the shortcomings of the underlying combinations with respect to the independent claims, and

claim 26 depends directly or indirectly from one of the independent claims, claim 26 is patentable over the combination with Levasseur '882 for the same reasons as the independent claims are patentable over the underlying combinations. The combination of Moore '944, Pool '986, and Bader '998, with Midcap '382 and Levasseur '882, does not, and cannot, reach the invention of claim 26 for the same reasons as previously discussed.

Applicants request withdrawal of the rejection, and the allowance of claim 26.

The Examiner asserts that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." *Office action, p. 14.* However, describing individual references, and identifying what they do and do not disclose, is not attacking references individually. Applicants' arguments are in all cases directed to the deficiencies in the combinations, after identifying the deficiencies in each individual reference making up the combination. This is entirely proper as the combination would necessarily be made from the elements of each reference forming the combination. Applicants' discussion of a particular reference in the combination is for ease of understanding so that the reader may understand the structure and function of the element in the combination. There is no other practical way to address this than by addressing the reference from which the structure came. However, such a specific reference is not arguing the combination against a single reference, but is explaining what the combination would teach or disclose.

The Examiner also relies on Official Notice or "common knowledge" in support of the rejections of claims 2, 3, 20, 28, and 29. This reliance cannot be sustained.

According to section 2144.03 of the Manual of Patent Examining Procedure (MPEP), "In certain circumstances where appropriate, an examiner may take official notice of facts not in the record or rely on 'common knowledge' in making a rejection, however such rejections should be judiciously applied."

USPTO findings of fact must satisfy the "substantial evidence" standard under the Administrative Procedure Act (APA). Federal Circuit decisions limit the ability of an examiner to take official notice of facts without supporting documentary evidence or to rely on common knowledge in the art in making a rejection. If such official notice is taken, it is necessary for the examiner to offer evidence in support of the examiner's conclusion of common knowledge in the art.

Official notice without documentary evidence to support an examiner's conclusion is permissible only in limited circumstances. Official notice unsupported by documentary evidence can only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art, are capable of instant and unquestionable demonstration as being well-known.

It is not appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. Assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. Facts that are normally subject to the possibility of rational disagreement among reasonable men are not amenable to the taking of official notice.

It is never appropriate to rely solely on "common knowledge" in the art, without evidentiary support in the record, as the principal evidence upon which a rejection is based. An examiner cannot simply reach conclusions based on the examiner's own understanding or experience, or on the examiner's assessment of what would be basic knowledge or common sense. The examiner must point to some concrete evidence in the record in support of such findings. Even when the USPTO clearly has expertise in the subject matter over which it exercises jurisdiction, such expertise may provide sufficient support for conclusions only as to peripheral issues. An assessment of basic knowledge

and common sense that is not based on any evidence in the record lacks substantial evidence support.

In certain cases, official notice may be taken without specific reliance on documentary evidence of a fact that is asserted to be "common knowledge," where the fact noticed is readily verifiable, such as when other references of record support the noticed fact, or where there is nothing of record to contradict it. If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice so as to adequately traverse the rejection in the next reply after the Office action in which the common knowledge statement is made. The Examiner has failed to comply with these requirements.

For example, the Examiner "takes Official Notice that it is common knowledge to one of ordinary skill in the art of operating conditions for a washing machine that the basket would have a predetermined range of motion that is inherent to defining the operational conditions of the boot." *Office action, p. 4*. The Examiner has failed to adequately support the Examiner's reliance on official notice since the alleged facts are not capable of instant and unquestionable demonstration as being well-known. First, it is unclear what the Examiner means by "a predetermined range of motion that is inherent to defining the operational conditions of the boot." What range of motion is inherent to defining the operational conditions of the boot? What operational conditions of the boot are to be defined with respect to range of motion? What is inherent in a predetermined range of motion that is related to defining the operational conditions of the boot?

The alleged "facts" are not appropriate for assertions of undocumented official notice or common knowledge. The Examiner asserts technical facts, i.e. a relationship between a predetermined range of motion and operational conditions of a boot, in an area

of esoteric technology, i.e. washing machine anti-vibration support members, which is unsupported by any citation to a reference work recognized as standard in the pertinent art. The conclusion that a predetermined range of motion is inherent to defining the operational conditions of a boot would appear to be normally subject to the possibility of rational disagreement among reasonable men and not amenable to the taking of official notice.

### **CONCLUSION**

For the reasons discussed above, all claims remaining in the application are allowable over the prior art. Early notification of allowability is respectfully requested.

If there are any remaining issues which the Examiner believes may be resolved in an interview, the Examiner is respectfully invited to contact the undersigned.

Respectfully submitted,  
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By: \_\_\_\_\_ /Michael F. Kelly/

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